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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 18.12.2015

% **RSA 415/2015**

DELHI DEVELOPMENT AUTHORITY Appellant

Through: Ms. Mrinmoi Chatterjee, Advocate.

versus

VEER SINGH Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

C.M. No.29103/2015

1. Exemption allowed subject to all just exceptions.
2. The application stands disposed of.

RSA 415/2015 and C.M. Nos.29101-102/2015

3. By the aforesaid application being C.M. No.29101/2015, the appellant seeks condonation of 199 days delay in filing the present second appeal. I have heard learned counsel for the appellant on the said application as well as on merits. Since I am not inclined to issue notice in the second appeal, there would be no purpose in directing issuance of notice in the delay

application, even if the said delay is considered to be justified. Accordingly, I proceed to dispose of the present appeal.

4. The appellant/ DDA has filed the present second appeal to assail the judgment & decree passed by the First Appellate Court, namely the learned Additional District Judge-05, Central District, Tis Hazari Courts, Delhi in RCA No.13/2013 preferred by the appellant/ defendant. The First Appellate Court has dismissed the said first appeal and affirmed the judgment & decree dated 17.01.2013 passed by the learned Trial Court, namely the Court of the learned Civil Judge (West), Tis Hazari Courts, Delhi in Suit No.240/2008 titled *Sh. Veer Singh Vs. Delhi Development Authority & Another*.

5. The respondent/ plaintiff had filed the said suit to seek relief of mandatory & permanent injunction on the premise that he is the son and nominee of late Smt. Dhanno Devi, who was inhabitant of Ashoka Pahari, Faiz Road, Karol Bagh, New Delhi. She was one of the settlers, who occupied a piece of land in Karol Bagh, New Delhi known as Ashoka Pahari. He stated that the defendant formulated a plan for re-development of Ashoka Pahari area on 17.11.1998. The inhabitants of Ashoka Pahari area were evicted after conducting survey in July 2001. The evictees under the rehabilitation policy of the appellant/ defendant were entitled to residential and commercial units within the re-developed area of Ashoka Pahari. The name of the plaintiff's mother Smt. Dhanno Devi was mentioned at serial No.175 in the survey list. The plaintiff's mother was shown at T-2360, residential area. The mother of the plaintiff filed the option application for allotment of LIG/MIG flat at Ashoka Pahari area, which was accepted by the

DDA with the requisite amount for registration by the office of Dy. Director (LM) NZ, Pitampura. The plaintiff's mother Smt. Dhanno Devi died on 10.09.2002.

6. Since the DDA was not implementing the aforesaid policy, a writ petition was preferred before this Court by the Weaker Section Welfare and Rehabilitation Society representing the evictees of Ashoka Pahari area, being W.P. No. 17785/2004. In those proceedings, on 29.08.2005, the Court directed initiation of construction work of the flats and shops and for allotment within three years. Despite the said direction, initially the action was not taken. On 01.09.2006, the Director (LM) of DDA submitted a detailed report to the Director (R) stating that the mother of the plaintiff was not entitled to allotment of flat. The claim of the petitioner was rejected on 21.04.2003. The rejection was premised on the ground that Smt. Dhanno Devi had sold the Government land to one Sh. Avtar Singh, and consequently, both the seller and the purchaser were not entitled to claim allotment of flat.

7. Aggrieved by the same, initially the plaintiff represented to the defendant on 23.11.2006 – denying that his mother had sold the land bearing No.T-2360, Ashoka Pahari, Karol Bagh, New Delhi to Sh. Avtar Singh.

8. The plaintiff then filed the suit clearly stating that it was only the Malba of a small room, which was sold by Smt. Dhanno Devi to Sh.Hardarshan S/o Sh. Avtar Singh, and Sh. Avtar Singh had even given a clarificatory letter to the defendant on 15.11.2006 stating that his son had never purchased any Government land bearing No.T-2360, Ashoka Pahari,

Karol Bagh, New Delhi from Smt. Dhanno Devi. He stated that his son had only purchased the Malba of one room 13 ft. × 8 ft. of the property bearing T-2360. It was further stated that Government land could not be transferred, nor could it be sold or purchased by anybody. The plaintiff, consequently, sought a mandatory injunction against the appellant/ DDA to seek a direction that the DDA considers the case of the respondent/ plaintiff for allotment and for restoration of the entitlement of the plaintiff. In the written statement, the appellant reiterated its decision that Smt. Dhanno Devi had sold her entitlement in respect of T-2360 to Sh. Hardarshan.

9. The Trial Court framed the issues; one of the primary issues being whether the plaintiff is entitled to the decree of mandatory injunction, as prayed for. The plaintiff led his evidence. In his evidence, he, *inter alia*, proved the clarification letter from Sh. Avtar Singh as Exhibit PW-1/7. He also produced Sh. Avtar Singh as PW-2, who deposed that his son had not purchased any land from Smt. Dhanno Devi and that he had only purchased the Malba. The defendant/ DDA in its evidence produced the policy sought to be relied upon, which was marked as Mark B. The defendant's witness DW-1— the Field Investigator of the DDA, admitted that Smt. Dhanno Devi was in possession at the time of demolition. He also admitted that policy Mark B was not notified at the time of rejection of claim of Smt. Dhanno Devi. The Trial Court returned finding in favour of the plaintiff that Smt. Dhanno Devi was not disentitled to allotment, as there was no merit in the defendant's claims that she had sold her right of allotment to Sh. Hardarshan Singh. Pertinently, the so-called agreement, whereby Smt. Dhanno Devi allegedly sold her right in T-2360 to Sh. Hardarshan Singh was not even

exhibited before the Trial Court. Consequently, the Trial Court directed the defendant to consider the case for allotment of flat to the plaintiff and his name was restored at serial No.61 of the survey list.

10. The appellant has placed on record the agreement to sell stated to have been executed between Smt. Dhanno Devi and Sh. Hadarshan Singh along with the present appeal. However, the same has not been duly proved before the Court, and is of no avail. In any event, a perusal of the same shows that the same pertains to the Malba situated at T-2360. It does not pertain to the property as such.

11. The First Appellate Court has concurred with the said finding of the Trial Court.

12. The submission of learned counsel for the appellant is that a perusal of the agreement to sell dated 10.09.1998 between Smt. Dhanno Devi and Sh. Hardarshan Singh would show that the same pertained to the super structure at property No. T-2360, and not to the Malba. She submits that under the rehabilitation scheme, allotment could not be made to a person, who either sells or transfers his right of allotment to any other person, or to the person who acquires such a right. Since the scheme was formulated for rehabilitation of the encroachers, who had no vested right in the land encroached upon by them, the right conferred upon the encroacher was not transferable.

13. Having heard learned counsel and perused the judgments of the Courts below, I am of the view that there is absolutely no merit in the present second appeal. The policy relied upon, admittedly, came in the year

2004, whereas the cancellation took place in the year 2003. The so-called agreement to sell is dated 10.09.1998. Even if the same were to be considered, the said policy could not have been given retrospective effect. Moreover, the agreement to sell only pertains to the Malba. Pertinently, Sh.Avtar Singh, father of Sh.Hardarshan Singh was produced as a witness of the plaintiff, who also testified that only the Malba had been purchased by his son. The defendant's witness admitted during his cross-examination that at the time of demolition, Smt. Dhanno Devi was in possession of the super structure. Learned counsel for the appellant on a query by the Court states that no other person – including Sh. Hardarshan, had staked a claim for allotment in respect of the claim arising out of occupation of Smt. Dhanno Devi, under the rehabilitation scheme.

14. The two Courts below have returned concurrent findings of fact and the appellant has not been able to point out any perversity in the impugned judgment calling for interference by this Court. The appeal is, accordingly, dismissed.

VIPIN SANGHI, J.

DECEMBER 18, 2015

B.S. Rohella